



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Thirtieth Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

March 27, 2019

S.B. 1498, S.D. 1, H.D. 1 – RELATING TO THE
HAWAII LABOR RELATIONS BOARD

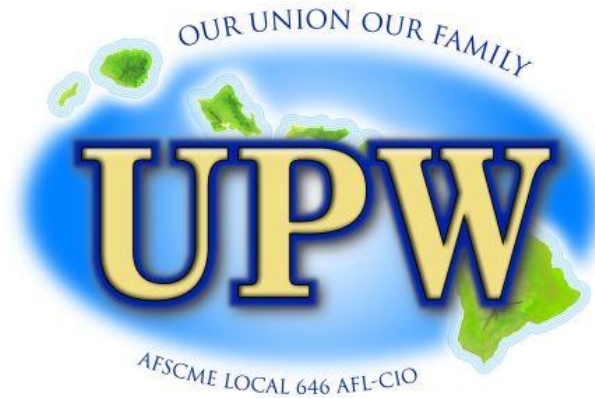
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 1498, S.D. 1, H.D. 1 which requires the Hawaii Labor Relations Board ("HLRB" or "Board") to determine the qualifications of grievance arbitrators, resolve disputes over the qualifications and criteria for potential interest arbitrators. We appreciate the amendments that were adopted by the Labor and Public Employment Committee.

There is a clear delineation between grievance arbitrators – who resolve disputes by applying the terms of an existing collective bargaining agreement, and interest arbitrators – who determine what terms shall be included in the bargaining agreement and by law must weigh the financial ability of the Employer to meet costs, the comparison of wages and conditions of employment with others performing similar services, and the current and future economic condition of the counties and the State. Due to the fundamental difference between resolving contractual disputes and determining the provisions of the contract, it is not only appropriate to statutorily segregate the functions of a grievance arbitrator and an interest arbitrator, but also necessary to empower the Board to resolve disputes over the qualifications of arbitrators. As such, the amendments proposed in S.B. 1498, S.D. 1, H.D. 1 broaden the Board's adjudicatory authority to include resolving disputes over the qualifications and criteria of the list of five arbitrators provided pursuant to Section 89-11(e)(2)(A), Hawaii Revised Statutes, and clarify that the arbitrators must be qualified and experienced interest arbitrators.

Thank you for the opportunity to testify in strong support of S.B. 1498, S.D. 1, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



THE HAWAII STATE HOUSE OF REPRESENTATIVES

The Thirtieth Legislature
Regular Session of 2019

COMMITTEE ON FINANCE

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair

Date of Hearing: Wednesday, March 27, 2019
Time of Hearing: 2:00 p.m.
Place of Hearing: Conference Room 308

**TESTIMONY ON SENATE BILL 1498, SD1, HD1 RELATING TO HAWAII LABOR
RELATIONS BOARD**

By DAYTON M. NAKANELUA,
State Director of the United Public Workers,
AFSCME Local 646, AFL-CIO ("UPW")

The UPW is the exclusive bargaining representative for approximately 14,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and four counties. The UPW also represents about 1,500 members in the private sector.

SB1498, SD1, HD1 requires the Hawaii Labor Relations Board to determine the qualifications for grievance arbitrators. The board is also required to resolve disputes over the qualifications and criteria for potential arbitrators selected under certain circumstances to resolve the collective bargaining process.

The UPW **supports** this measure.

Thank you for the opportunity to submit this testimony.

SB-1498-HD-1

Submitted on: 3/26/2019 10:29:54 AM

Testimony for FIN on 3/27/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Pride Work HI	Pride at Work Hawaii	Support	Yes

Comments:

Aloha Representatives,

Pride@Work Hawaii supports the passage of SB 1498 SD 1 HD 1.

Mahalo for the opportunity to testify.

Pride@Work Hawaii

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LIEUTENANT GOVERNOR

SCOTT T. MURAKAMI
INTERIM DIRECTOR, DLIR

LEONARD HOSHIJO
DEPUTY DIRECTOR, DLIR



MARCUS R. OSHIRO
BOARD CHAIR

SESNITA A.D. MOEPONO
BOARD MEMBER

J N. MUSTO, Ph. D
BOARD MEMBER

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD
830 PUNCHBOWL STREET, ROOM 434
HONOLULU, HAWAII 96813

Phone (808) 586-8610 / FAX (808) 586-8613
Email: dlir.laborboard@hawaii.gov

March 26, 2019

LATE

To: The Honorable Sylvia Luke, Chair,
The Honorable Ty J.K. Cullen, Vice Chair, and
Members of the House Committee on Finance

Date: Wednesday, March 27, 2019
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

From: Hawai'i Labor Relations Board (HLRB or Board)
Dept. of Labor and Industrial Relations (DLIR)

Re: SB 1498 SD1 HD1

RELATING TO THE HAWAII LABOR RELATIONS BOARD.

I. OVERVIEW OF PROPOSED LEGISLATION

This bill amends Hawai'i Revised Statutes (HRS) §§ 89-5(i)(6), (7) and 89-11(e)(2)(A) by the following:

1. § 89-5(i)(6) currently requires the Board to determine qualifications and establish lists *from nominations from the public employers and employee organizations* to serve as mediators or arbitrators.

The bill requires the Board to determine qualifications and establish lists *from nominations from public employers and employee organizations* to serve as mediators, grievance arbitrators, or a combination thereof.

2. § 89-5(i)(7) is a new section that requires the Board to resolve disputes over the qualifications and criteria of the list of five qualified arbitrators provided pursuant to section 89-11(e)(2)(A).
3. § 89-11(e)(2)(A) currently requires the Board to request from the American Arbitration Association (AAA) to furnish a list of five qualified arbitrators for the employer and exclusive representative to strike the names from the list until a single name is left to be appointed to the interest arbitration panel as the neutral Chair.

The Bill proposes to add the words “and experienced interest” to the phrase “five qualified arbitrators” to read “five qualified and experienced interest arbitrators”.

II. COMMENTS

The HLRB submits these comments focused around four major points.

Fiscal Concerns

From a fiscal standpoint, the Board is concerned that the new § 89-5(i)(7), which asks the Board to resolve disputes over the qualifications and criteria of list of five qualified arbitrators provided under section 89-11(e)(2)(A), places an additional burden on the Board. The language of this section proposes to require the Board to deal with a contest between two parties, a union and an employer group, regarding qualifications of arbitrators that have been qualified by a third party. The Board’s concern is the time and expense the Board will require to process any such disputes, including researching, examining, and determining each pre-vetted arbitrator’s qualifications as proposed by this bill.

The bill as drafted does not provide the Board without any specificity of process, qualifications, or access to additional information. The Board will go into each of these sections but would like to note that the Board believes that, at a minimum, to adequately fulfill these requirements, it would require an additional researcher position, whose salary range would need to be between \$45,000-60,000 to attract qualified candidates who would have the expertise to determine an arbitrator’s qualifications. Further, the Board would require additional office space and equipment as the Board is currently using all allotted office space and equipment.

However, the Board also believes that spending these funds may be a waste of the State and the Board’s resource by requiring the Board to take steps that are unduly burdensome and unnecessary. If the Legislature were to adopt the Board’s suggested

amendments, the Board believes that it may be able to fulfill the requirements set forth by the bill without additional staffing.

Lack of Specificity of Process

Of all of the Board's proceedings provided for in HRS Chapter 89, the two types of proceedings most similar to the disputes contemplated under the proposed § 89-5(i)(7) are prohibited practice complaints (see § 89-13) and declaratory rulings, wherein the Board rules as to the interpretations of sections in Chapter 89. Neither of these two methods lends itself to the process of resolving disputes regarding qualifications of arbitrators, as no prohibited practice is being alleged, and the required qualifications of arbitrators are not set out in statute, other than being "qualified and experienced interest arbitrators".

The Board procedures, at this time, do not cover disputes over arbitrator qualifications. Therefore, the Board would need to create new procedures specifically to handle these types of disputes, a process that would take time and manpower and possibly require additional statutory amendment to take effect.

The Board would recommend that, if the bill were to be passed, that it be given a final effective date of no sooner than July 1, 2024 so that the Board can prepare and properly enact these procedures.

Second-Guessing Qualifications

The Board is concerned that the bill as currently drafted still requires the Board to second-guess a third-party's list of arbitrators. AAA has a process through which they screen arbitrators to determine grievance arbitrators versus interest arbitrators. The Board is not privy to this screening process, nor is the Board privy to the backgrounds of the members of AAA. Therefore, the Board has serious concerns about the appropriateness of HRS § 89-5(i)(7) as drafted.

Essentially, the Board's position is that as long as AAA is involved in the selection process, the Board is unable to resolve disputes regarding the qualifications of arbitrators without additional funding because the bill, as drafted, requires the Board to review the qualifications of arbitrators that have been selected by another institution.

The Board understands that individual arbitrators pay to be members of AAA. AAA then selects arbitration panels, when requested, consisting solely of those individuals who have paid to be members of AAA. The Board is not entirely sure as to why AAA has been given this benefit by the State, as other potentially qualified arbitrators who are not AAA members are unable to be selected under the bill as currently written.

If the Board is required to qualify the arbitrators selected by AAA, as it would be under the current draft of the bill, then the Board would require an additional researcher position, as stated above, because the Board would need to do significant independent research to determine AAA's method for screening interest arbitrators as well as the qualifications of each individual arbitrator. However, the Board believes that this may be a waste of government resources. If AAA were removed from the bill, as suggested in the Board's proposed amendments, it is possible that the Board would be able to fulfill these new requirements without additional staffing if the Board is instructed to maintain a list of names suggested by the unions and employers.

The Board notes that if unions desire to bring in non-local arbitrators, the unions would have the ability to submit names of non-local arbitrators under the Board's proposed amendments.

Legislative History of HRS § 89-11(e)

Finally, the legislative history of interest arbitration in Hawai'i began in 1978 with the creation of HRS §89-11(e). Attached please find a copy of the final Standing Committee Report 632-78 cited on pp. 1032-1033 of the Journal of the Senate of the Ninth Legislature of the State of Hawai'i: Regular Session of 1978, which gives a more concise legislative intent of § 89-11(e)(2)(A).

Proposed Amendments

If the Legislature intends to pass this bill as drafted, then the Board makes the following suggestions to clarify and synchronize the proposed language so there will be only one list of interest arbitrators which will be created under HRS § 89-5(i)(6) which will be used in HRS § 89-11(e)(2)(A).

§ 89-5(i)(6) to read as follows:

Determine qualifications and establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators, grievance arbitrators, or interest arbitrators pursuant to § 89-11(e) (2) (A);

1. § 89-5(i)(7) – DELETE

2. § 89-11(e)(2)(A) to read as follows:

(A) Arbitration panel. Two members of the arbitration panel shall be selected by the parties; one shall be selected by

the employer and one shall be selected by the exclusive representative. The neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within thirty days from the date of impasse, the board shall ~~[request the American Arbitration Association, or its successor in function, to]~~ furnish a list of five ~~[qualified]~~ interest arbitrators from a list established pursuant to section 89-5(i)(6) from which the neutral arbitrator shall be selected. Within five days after receipt of the list, the parties shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the neutral arbitrator and chairperson of the arbitration panel.

Finally, the Board requests additional money for the above described additional researcher position and expenses required to carry out the additional duties, as well as an effective date of no sooner than July 1, 2024, should its proposed amendments be rejected. Thank you for the opportunity to testify today. We are available to answer any questions.

Attachment

services in the community. Your Committee is concerned that a "revolving door" not be created at Waimano Training School and Hospital. Your Committee urges, through this resolution, that deinstitutionalization be accomplished together with provision for sufficient programs in the community to provide a smooth transition from the dependency that is sometimes fostered in large institutions to a more independent and self sufficient life in the community.

Your Committee has deleted the fourth resolve clause in reference to financial support following the disabled person as he or she moves from facility to facility. Your Committee received testimony from the Department of Health that this provision will require extensive study.

Your Committee on Health concurs with the intent and purpose of S.R. No. 22, as amended herein, and recommends its adoption in the form attached hereto as S.R. No. 22, S.D. 1.

Signed by all members of the Committee.

SCRep. 630 Health on S.R. No. 25

The purpose of this resolution is to request the Department of Health, the State Planning and Advisory Council on Developmental Disabilities and the Protective Services and Advocacy Agency to report on the implementation of the state-wide system of protective services and advocacy.

Your Committee finds that the primary purpose of the Protection and Advocacy system is to provide important linkages between agencies, services and qualified volunteers on behalf of developmentally disabled persons who are moving into the mainstream of society and everyday activities in the community.

Your Committee further finds that the State Planning and Advisory Council on Developmental Disabilities and the Protective Services and Advocacy Agency are in a unique position to evaluate services for the developmentally disabled and your Committee therefore requests a progress report prior to the convening of the 1979 legislative session and that the Department of Health, the State Planning and Advisory Council on Developmental Disabilities, and the Protective Services and Advocacy Agency cooperate in the preparation of the report. It is intended that the report identify the most serious gaps in services and give insight into the administrative and legal barriers commonly experienced by the developmentally disabled.

Your Committee has made a technical amendment to the last paragraph of the resolution.

Your Committee on Health concurs with the intent and purpose of S.R. No. 25, as amended herein, and recommends its adoption in the form attached hereto as S.R. No. 25, S.D. 1.

Signed by all members of the Committee.

SCRep. 631-78 Gov. Msg. No. 159

Recommending that the Senate advise and consent to the nomination of SUNAO KIDO, to the Public Utilities Commission, for term ending December 31, 1983.

Signed by all members of the Committee.

SCRep. 632-78 Human Resources on H.B. No. 1815-78

The purpose of this bill is to amend Section 89-11, Hawaii Revised Statutes, by adding a new subsection (d) to provide for the establishment of compulsory arbitration procedures for resolving disputes over the terms of an initial or renewed agreement involving the exclusive representative of bargaining Unit (11), Firefighters. Any impasse dispute involving Unit 11 which continues 15 working days after the date of impasse shall be submitted to the arbitration procedures established under this bill unless the parties to the dispute mutually agree upon an alternative arbitration procedure within 18 working days from the date of impasse.

This bill provides for final-offer whole package arbitration as the method of impasse resolution. This approach requires the arbitrator to select the most reasonable of the final offers submitted to him by the parties, and to issue a decision incorporating that offer without modification. The decision of the arbitrator shall be final and binding upon the parties; provided that at any time and by mutual agreement, they may modify

or amend the decision. Agreements reached pursuant to the decision of an arbitrator as provided in this bill shall not be subject to ratification by the employees concerned moreover, employees covered by this method of impasse resolution voluntarily relinquish their right to strike by virtue of such coverage. As with all other collective bargaining agreements, this bill provides for final approval of any cost items by the appropriate legislative bodies.

Your Committee finds that more than any other alternative mechanism, final-offer arbitration induces negotiated agreements because the very process generates certain risks when negotiations fail (e.g., losing everything in a decision which is final and binding upon both parties). The arbitrator is not free to "invent" an arbitration award but rather must select either the final offer submitted by the union or the one submitted by the employer. In any other form of arbitration, the parties, knowing full well that the arbitrator is likely to decide somewhere between the union's position and employer's position, simply do not negotiate in good faith and cling to outrageous positions. With final-offer arbitration, the party that maintains an unreasonable position faces the prospect of losing everything, thus forcing him to negotiate.

This bill further provides that in the event the parties to the dispute cannot mutually agree upon an arbitration procedure and an arbitrator or arbitrators, the dispute shall be submitted to a three-member arbitration panel for resolution. Your Committee believes that this panel approach provides assurance that arbitrators accountable to and knowledgeable about Hawaii's particular concerns may be selected. This bill further provides that within twenty-one working days from the date of impasse, two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and the other by the exclusive representative. HPERB shall then appoint these two arbitrators to the panel. The impartial, third member of the panel shall be selected by the two previously appointed arbitrators and shall chair the arbitration panel. If the two previously selected arbitrators fail to select the third, impartial arbitrator within twenty-four working days from the date of impasse, the HPERB shall request the American Arbitration Association to furnish a list of five qualified arbitrators with "experience in interest arbitration" from which the impartial third arbitrator shall be selected by the disputing parties.

Your Committee has made the following amendments to this bill:

(1) The provision that those individuals named to the list of five arbitrators by the American Arbitration Association must have "experience in interest arbitration" is deleted. Your Committee believes that this experience requirement is too restrictive insofar as it does not consider the paucity of qualified arbitrators with "experience in interest arbitration" in the State, thus effectively depriving local arbitrators (whether interest arbitrators or otherwise) of a fair opportunity of being named to the list, and consequently for the job as the third, impartial arbitrator.

(2) Page 9, lines 23 and 24, are amended as follows:

1. a comma is added after the word "services";
2. the word "with" is changed to "of"; and
3. the phrase "State and county" is added after the word "other".

The intent of this amendment is to clarify that, among other things, the arbitration panel shall consider:

(1) the wages, hours, and conditions of employment of other persons performing similar services in political jurisdictions other than those of the State; and

(2) the wages, hours, and conditions of employment of those employees belonging to other collective bargaining units of the State of Hawaii and of its several counties in arriving at a selection of a final offer.

Your Committee notes that this bill is similar to S.B. 237 which was passed by the Legislature during the last session, but was vetoed by the Governor. This H.B. 1815-78, H.D. 1, as amended, is designed to overcome specific objections of the Governor to S.B. 237.

Your Committee on Human Resources is in accord with the intent and purpose of H.B. No. 1815-78, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1815-78, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

**LATE**

STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS

*" A Police Organization for Police Officers Only "
Founded 1971*

March 25, 2019

The Honorable Sylvia Luke
Chair
The Honorable Ty J.K. Cullen
Vice chair
House Committee on Finance
Hawaii State Capitol, Room 306
415 South Beretania Street
Honolulu, HI 96813

Re: **SB1498-Relating to the Hawaii Labor Relations Board**

Dear Chair Luke, Vice Chair Cullen:

I write to you on behalf of the State of Hawaii Organization of Police Officers ("SHOPO") in strong support of SB1498 which relates to amendments to HRS §§89-5 and 89-11.

The Hawaii Labor Relations Board ("HLRB") is currently responsible for determining and maintaining a list of "qualified" mediators and arbitrators. See HRS §89-5. For interest arbitrations, the HLRB also has the authority to issue a list of five (5) potential interest arbitrators in conjunction with the American Arbitration Association ("AAA") from which the parties can select a neutral arbitrator to chair an interest arbitration. See HRS §89-11. To ensure that interest arbitrations function appropriately and fairly, it is imperative that not only qualified but also "experienced" arbitrators are among those on the list of five (5) neutrals issued by the AAA through the HLRB. Given that critical issues including cost items and working conditions are determined by the interest arbitration panel, "experience" is a must requirement for any neutral serving as the chair of such a panel. We cannot think of any argument that would weigh against requiring "experience" for those who wish to chair an interest arbitration panel and continuing to vest that vetting authority with the AAA and HLRB who are already in charge of such lists.

We thank you for allowing us to be heard on this very important issue and respectfully hope that your committee will unanimously support this bill.

RESPECTFULLY SUBMITTED,

Malcolm Lutu

MALCOLM LUTU
SHOPO PRESIDENT



HAWAII FIRE FIGHTERS ASSOCIATION

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 1463, AFL-CIO

1018 PALM DRIVE, HONOLULU, HAWAII 96814-1929

TELEPHONE (808) 949-1566 FAX: (808) 952-6003

WEBSITE: www.hawaii firefighters.org

**HOUSE OF REPRESENTATIVES
THE THIRTIETH LEGISLATURE
REGULAR SESSION OF 2019**

March 27, 2019

LATE

Committee on Finance

**Testimony by
Hawaii Fire Fighters Association, Local 1463, IAFF, AFL-CIO**

**S.B. No. 1498 RELATING TO THE HAWAII LABOR RELATIONS BOARD
S.D. 1, H.D. 1**

The Hawaii Fire Fighters Association (HFFA), Local 1463, IAFF, AFL-CIO, represents more than 1,900 professional active-duty fire fighters throughout the State. The HFFA, on behalf of all of our members, **strongly supports Senate Bill 1498, S.D. 1, H.D. 1** which allows the Hawaii Labor Relations Board to review and resolve disputes over qualifications and criteria of potential arbitrators under certain circumstances.

HFFA is acutely aware that grievance arbitration and interest arbitrations differ in scope and requires potential arbitrators to have experience and knowledge of the type of arbitration. We believe it is in the best interest of all of the stakeholders that the list of arbitrators includes qualified candidates for the particular type of arbitrations. We believe that the HLRB should have the authority to review and determine the appropriateness of the list of arbitrators provided to the parties.

HFFA appreciates your Committee's favorable consideration of this measure. Thank you for the opportunity to testify.